NCDOR | NORTH CAROLINA DEPARTMENT OF REVENUE

Roy Cooper
Governor

Ronald G. Penny
Secretary

January 31, 2024

[redacted]

Re: [redacted]
Private Letter Ruling
FEIN: [redacted]

Dear [redacted]

The Department has completed its review of your request for a private letter ruling on behalf of [redacted] ("Taxpayer"). In making this written determination, the Department has considered the facts presented in your request provided to the Department.

This private letter ruling is a written determination issued under N.C. Gen. Stat. § 105-264.2 and applies the tax law to a specific set of existing facts furnished by you on behalf of Taxpayer. This written determination is applicable only to Taxpayer and as such has no precedential value except to Taxpayer.

Overview and Relevant Facts

You advise:

> [Taxpayer] is a [redacted]. [Taxpayer] operates websites providing users the ability to interact live via an audio/video connection with [redacted] The vast majority ([redacted] of [Taxpayer's] U.S. revenues involve [redacted] physically located [redacted]. For [redacted] that are physically located [redacted]
>
> [Taxpayer] has customers throughout the U.S., including North Carolina. For purposes of this [private letter ruling request], it is assumed [Taxpayer] has [redacted] nexus with North Carolina for sales tax purposes.
>
> Taxpayer's [redacted] displays [redacted] of the [redacted] available [redacted]. Any visitor to the site can [redacted]. The [redacted] will have

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[redacted], so the user can see and hear [redacted], and interact by way of live chat [redacted] multiple users may be connected concurrently to [redacted], users may engage in text chat with [redacted], there is no charge for being in [redacted].

While in [redacted], a [redacted] may decide to enter [redacted] by [redacted]. Immediately, the system [redacted]. The [redacted] user in [redacted] (customer) can then have a [redacted] interaction with [redacted]. That interaction is live, not pre-recorded audio/video. The customer does not download anything from [redacted].

[redacted].

No fee is charged for connecting [redacted] in [redacted]; fees are only charged for [redacted]

Each user uses his/her own Internet connection to access [redacted]. Similarly, each [redacted] responsible for providing his/her own Internet connection to the [redacted]. [redacted] provide the infrastructure required to connect the users, the website, and [redacted]. This infrastructure includes a [redacted]

[redacted] Department also review Taxpayer's terms of service Taxpayer's [redacted] ("Service Agreement"). The Service Agreement provided, in part, the following:

[redacted]

[redacted]

[redacted]

[redacted]

Issue

Are Taxpayer's charges for [redacted] subject to North Carolina sales and use tax?

Applicable Statutes and References

North Carolina imposes State, local, and transit rates of sales and use tax on a retailer engaged in business in the State based on the retailer's net taxable sales of, or gross receipts derived from, tangible personal property, certain digital property, and taxable services. N.C. Gen. Stat. §§ 105-164.4, 105-164.6, 105-467, 105-468, 105-483, 105-498, 105-507.2, 105-509.1, 105-537 and Chapter 1096 of the 1967 Session Laws. The taxes apply to both the sales price of certain digital property and the gross receipts derived from admission charges to an entertainment activity. N.C. Gen. Stat. § 105-164.4

N.C. Gen. Stat. § 105-164.3(33) defines the term "certain digital property" as "[s]pecified digital products and additional digital goods. The term does not include an information service or an educational service."

N.C. Gen. Stat. § 105-164.3(253) defines the term "specified digital products" to include digital audiovisual works.

N.C. Gen. Stat. § 105-164.3(59) defines the term "digital audiovisual work" as "[a] series of related images, that when shown in succession, impart an impression of motion, together with accompanying sounds, if any, and that is transferred electronically."

N.C. Gen. Stat. § 105-164.3(271) defines the term "transferred electronically" as "[o]btained by the purchaser by means other than tangible storage media and includes delivered or accessed electronically."

N.C. Gen. Stat. § 105-164.4(a)(1)b. provides, in part, "[t]he general rate of tax applies to. . . [t]he sales price of certain digital property. The tax applies regardless of whether the purchaser of the property has a right to use it permanently or to use it without making continued payments."

N.C. Gen. Stat. § 105-164.3(7) defines admission charge as "[g]ross receipts derived for the right to attend an entertainment activity. The term includes a charge for a single ticket, a multi-occasion ticket, a seasonal pass, and an annual pass; a membership fee that provides for

admission; a cover charge; a surcharge; a convenience fee, a processing fee, a facility charge, a facilitation fee, or similar charge; or any other charges included in gross receipts derived from admission."

N.C. Gen. Stat. § 105-164.3(85) defines entertainment activity, in part, as a "live performance or other live event of any kind, the purpose of which is for entertainment."

Ruling

Based on the information provided and the Service Agreement [redacted] Taxpayer customers pay for live audio and video from [redacted]. More specifically, [redacted] are performing live [redacted] and uploading original content for the entertainment of visitors and subscribers of the website, usually on a [redacted]. The live video and video content meets the definition of digital audiovisual work because it provides a "series of related images, that when shown in succession, impart an impression of motion, together with accompanying sounds" and is transferred electronically. As a result, the charges for [redacted] are subject to North Carolins sales and use tax[1].

This ruling is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. If the facts and circumstances given are not accurate, or if they change, then Taxpayer may not rely on it. If Taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the Taxpayer is different in any material aspect from the facts and circumstances given in this ruling, then the ruling will not afford Taxpayer any protection. It should be noted that this document is not to be cited as precedent and that a change in statute, a regulation, or case law could void this ruling.

Issued on behalf of the Secretary of Revenue
By the Sales and Use Tax Division

[1] To the extent these live shows did not meet the definition of digital audiovisual work, the charges would be taxed as an admission charge for an entertainment activity because they are charges for a live performance or other live event offered for the purpose of entertainment.